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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JESSICA CHACON,

Plaintiff,

vs.

MIKE JOHANNNS, Secretary
of Agriculture, UNITED STATES
DEPARTMENT OF AGRICULTURE.
KEVIN LINDBERGH, an individual,

Defendants.

Case No.:

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, JESSICA CHACON, by and through her undersigned attorneys,
and hereby alleges, avers and complains as follows:

PARTIES

1. The Plaintiff, Jessica Chacon, was at all times relevant hereto a resident of Washoe County, State of Nevada.

2. Plaintiff is an adult competent female, who brings this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e alleging that the Defendants affected Plaintiff in her employment because of her sex.

3. Defendant, MIKE JOHANNNS, at all times relevant hereto was the Secretary of Agriculture, for the UNITED STATES DEPARTMENT OF AGRICULTURE and responsible for

1 the operations of the United States Department of Forestry or the United States Department of
2 Forestry. Both of the preceding titles are intended to mean the same thing.

3 4. Upon information and belief, Defendant, KEVIN LINDBERGH, is an individual
4 who at all times relevant hereto was a resident of the State of Nevada, and working for the United
5 States Department of Forestry.

6 5. Whenever, the term Defendant is used without specific exclusion of another
7 Defendant, then all the Defendants are included in the term. This applies even if the term
8 Defendant is used in the singular or the plural.

9 **JURISDICTION AND VENUE**

10 6. The court has subject matter jurisdiction and venue pursuant to 28 U.S.C. §§ 1331
11 and 1391.

12 7. On or about February 1, 2002 and May 3, 2002, Plaintiff timely filed charges with
13 the Equal Employment Opportunity Commission. Plaintiff has exhausted her administrative
14 remedies before the Commission. Plaintiff obtained her right to sue letter under Title VII and filed
15 this complaint within 90 days of her receipt of that notice.

16 **FACTUAL ALLEGATIONS**

17 8. Plaintiff is employed by the United States Department of Agriculture as a forest fire
18 fighter.

19 9. During or about May, 2001, Plaintiff began working on the Tatanka Hotshot Crew
20 (Crew) in the Black Hills National Forest, Region 2, USDA Forest Service in Custer, South Dakota
21 on a temporary assignment for the 2001 fire season.

22 10. Plaintiff was the only female on the 20 member Crew.

23 11. Between May, 2001, and September, 2001, (2001 fire season), Plaintiff was not
24 treated equally in relation to her male co-workers.

25 12. While employed by the Defendant, United States Department of Agriculture, Plaintiff
26 was subjected to a sexually hostile work place that was both objectively offensive and subjectively
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1 offensive to Plaintiff.

2 13. The sexual harassment was both severe and pervasive.

3 14. The sexual harassment was directed at Plaintiff by Defendant Kevin Lindbergh, a co-
4 worker on the Crew.

5 15. The harassment began in or about July, 2001.

6 16. The first act of sexual harassment occurred on or about July 8, 2001, and consisted
7 of Mr. Lindbergh entering Plaintiff's sleeping bag while Plaintiff was sleeping. Once inside,
8 Plaintiff's sleeping bag, Defendant Lindbergh placed himself in a highly sexual position known as
9 "spooning" directly behind Plaintiff and putting his arm around her waist initially while she was
10 sleeping. After she awoke and pushed Defendant Lindbergh away, Mr. Lindbergh refused to
11 immediately cooperate, but instead both assaulted and battered Plaintiff.

12 17. Immediately thereafter, Plaintiff reported the harassment to her squad boss, Joseph
13 Suarez who advised Plaintiff he would "keep an eye" on the situation. This turned out to be a hollow
14 promise as Joseph Suarez did not exert sufficient character to properly manage those men under his
15 charge.

16 18. Mr. Suarez failed to take corrective action.

17 19. After Plaintiff complained against Mr. Lindbergh, Mr. Lindbergh regularly yelled
18 at Plaintiff, disparaging comments, and participated in the open ostracization of Plaintiff in the
19 presence of other Crew members and management causing Plaintiff to suffer emotional distress,
20 making it difficult for her to perform her job without open and notorious discrimination.

21 20. Mr. Lindbergh regularly made crude and offensive remarks regarding women in the
22 presence of Plaintiff. The comments included specific comments regarding the use of woman's
23 sexual physical parts and his desire to use the same personally. Essentially, Mr. Lindbergh regularly
24 solicited sexual favors, made improper sexual comments, and improperly touched Plaintiff. Mr.
25 Suarez refused to stop this and other misconduct occurring within his division or operation.

26 21. As a result of management's failure to intervene, the harassment continued un
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1 relentlessly until September, 2001.

2 22. On or about September 12, 2001, Plaintiff was called into a meeting with Mr.
3 Lindbergh and supervisor's Patrick Laeng, Jason Virtue, and Donald Henry.

4 23. The meeting was hostile in nature because Plaintiff was further harassed, threatened,
5 and called a liar by Mr. Lindbergh with respect to her claims against him and discouraged by Mr.
6 Lindbergh and supervisor, Donald Henry from pursuing a formal complaint against Mr. Lindbergh
7 and other participants in the outrageous conduct.

8 24. During the aforementioned meeting, Plaintiff was informed by Supervisor Henry
9 and Mr. Lindbergh that she did not have the right to make a formal complaint. This was done in
10 order to protect a "runaway" division of the department of forestry from relentlessly discriminating
11 against female employees.

12 25. On or about September 18, 2001, Plaintiff contacted an EEO counselor.

13 25. Immediately following such contact, the Forest Supervisor, John Twiss, was made
14 aware of the acts of sexual harassment by Mr. Lindbergh toward Plaintiff and participation by Mr.
15 Suarez and other members of the Department of Forestry.

16 27. Mr. Twiss immediately separated Mr. Lindbergh and Plaintiff by transferring Plaintiff
17 to the Forest Supervisor's office to perform administrative duties.

18 28. Mr. Twiss and an investigator from the Forest Service commenced an investigation
19 into the sexual harassment by Mr. Lindbergh.

20 29. As a result of the investigation, Mr. Twiss concluded that, based on his own
21 admission, Mr. Lindbergh had committed acts of sexual harassment toward Plaintiff and Mr. Twiss
22 suggested Mr. Lindbergh be removed from working with Plaintiff, but with otherwise little or no
23 discipline.

24 30. On or about October 9, 2001, in lieu of being removed, Mr. Lindbergh executed an
25 Alternative Discipline Agreement wherein he admitted to "inappropriate and unwelcome touching
26 of Jessica Chacon, and making inappropriate comments regarding women." In addition, Mr.
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1 Lindbergh stated therein that he regretted his actions and would not repeat such misconduct in the
2 future. Mr. Lindbergh also agreed to have no further contact with Plaintiff and was forced to
3 participate as a speaker in EEO Sensitivity Training for the crew.

4 31. If Mr. Lindbergh violated the terms and conditions of said Agreement, he would be
5 removed from federal employment with Defendant.

6 32. In or about November, 2001, Mr. Lindbergh violated said agreement by sending
7 Plaintiff a card entitled "Revenge of the Goldfish" which was sexual in nature, inappropriate and
8 offensive to Plaintiff, thereby causing his removal from the agency.

9 **FIRST CAUSE OF ACTION**
10 **Sexual Harassment and Hostile Work Environment (Against all Defendants)**

11 33. Plaintiff incorporates by reference all the paragraphs of this Complaint as if more
12 fully set forth herein.

13 34. The acts and omissions complained of herein are a violation of Title VII of the Civil
14 Rights Act in that the Plaintiff has been subjected to repeated unwelcome sexual harassment at work
15 that was both objectively and subjectively offensive to a reasonable woman. This offensive conduct
16 involved not only offensive oral comments, written statements, offensive touching and threats of
17 touching on a regular basis so as to prevent Plaintiff from being able to properly perform her job as
18 promised by state and federal anti-discriminatory statutes.

19 35. Defendants' conduct was intentional and knowingly made in order to cause Plaintiff to
20 abuse Plaintiff while knowing that Mr. Saurez and other management would not impose proper
21 discipline upon the Defendant. Essentially, the Defendants know that the federal and state anti-
22 discriminatory statutes were not being followed.

23 36. As a direct and proximate result of Defendants' conduct, Plaintiff sustained
24 substantial damages in excess of \$100,000.00. The damages consist of Plaintiff losing promotions
25 for disclosing illegal and improper conduct, and being maligned to a point of suffering severe
26 emotional distress. The exact amount of damages will be determined at trial.

27 36. As a direct and proximate result of Defendants' conduct, the Plaintiff has been, and
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1 will be in the future, prevented from earning maximum earnings from her employment. The exact
2 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
3 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
4 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

5 37. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
6 is entitled to reasonable attorney fees and costs related thereto.

7 38. In committing the acts herein mentioned, the Defendants acted arbitrarily,
8 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
9 entitled to punitive damages in an amount to be determined at the time of trial.

10 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

11 **SECOND CAUSE OF ACTION**
12 **Negligent Supervision (against Defendant United States Department of Agriculture)**

13 39. Plaintiff incorporates paragraphs 1-38 of this Complaint as if more fully set forth
14 herein.

15 40. The Defendants were on notice that Plaintiff was being subjected to a hostile work
16 environment by Plaintiff's co-workers.

17 41. Despite being on notice of this situation, the Defendant failed and neglected to
18 properly supervise the co-workers.

19 42. Despite being on notice of this situation, the Defendant failed and neglected to
20 properly supervise the co-workers and to put an end to the threatening work environment to which
21 the Plaintiff was subjected.

22 43. As a direct and proximate result of Defendants' conduct, Plaintiff sustained
23 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
24 at trial.

25 44. As a direct and proximate result of Defendants' conduct, the Plaintiff has been, and
26 will be in the future, prevented from earning maximum earnings from her employment. The exact
27 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven

1 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
2 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

3 45. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
4 is entitled to reasonable attorney fees and costs related thereto.

5 46. In committing the acts herein mentioned, the Defendants acted arbitrarily,
6 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
7 entitled to punitive damages in an amount to be determined at the time of trial.

8 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

9 **THIRD CAUSE OF ACTION**
10 **Equal Protection Under 42 U.S.C. § 1983**
(against Defendant United States Department of Agriculture)

11 47. Plaintiff incorporates by reference all the paragraphs of this Complaint as if more
12 fully set forth herein.

13 48. Plaintiff is a woman. Plaintiff performed her job with diligence and in a competent
14 manner. Male employees were not subjected to comparable sexual harassment routinely imposed
15 upon female employees including, but not limited to, the Plaintiff, intentionally by each of the
16 Defendants. Male employees were not subjected to the same level of sexually inappropriate
17 discrimination, including, but not limited sexually improper statements which discussed female body
18 parts, solicited sexual misconduct, when Plaintiff complained the sexual discrimination against the
19 Plaintiff increased.

20 49. Male employees were allowed to openly solicit, sexually comment about, sexually
21 assault and batter female employees without any protection afforded to female employees. As a
22 result of this disproportionate treatment of female employees male defendants (i.e., from a sexual
23 standpoint). Plaintiff was denied equal protection required under federal and state anti-discriminatory
24 statutes.

25 48. Plaintiff was denied equal protection otherwise afforded female employees that are being
26 discriminated against; otherwise disclose the discrimination, and expect equal protection under state
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1 and federal statutes, the Plaintiff was denied any legitimate equal protection. Instead, she was
 2 maligned by other male workers, told not to pursue legitimate remedies available under equal
 3 protection statutes. The violation of Defendant's equal protection rights was intentional and caused
 4 substantial and irreparable damage to the Plaintiff.

5 49. As a direct and proximate result of Defendants' conduct, Plaintiff sustained
 6 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
 7 at trial.

8 50. As a direct and proximate result of Defendants' conduct, the Plaintiff has been, and
 9 will be in the future, prevented from earning maximum earnings from her employment. The exact
 10 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
 11 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
 12 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

13 51. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
 14 is entitled to reasonable attorney fees and costs related thereto.

15 52. In committing the acts herein mentioned, hereto the Defendants acted arbitrarily,
 16 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
 17 entitled to punitive damages in an amount to be determined at the time of trial.

18 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

19 **FOURTH CAUSE OF ACTION**

20 **Gender Discrimination**

21 **(Against Defendant United States Department of Agriculture)**

22 53. Plaintiff incorporates by reference all the paragraphs of this Complaint as if more
 23 fully set forth herein.

24 54. The acts and omissions of the Defendant as set forth herein have subjected the
 25 Plaintiff to disparate treatment compared to her male co-workers. Specifically, Plaintiff has been
 26 exposed to sexual discrimination during work which her male counterparts have not been subjected.

27 54. Despite disclosing illegal sexual comments (oral and written); improper sexual touching
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1 of this Plaintiff; and retaliation by management after Plaintiff disclosed discriminatory conduct
2 imposed upon her, Plaintiff suffered retaliation in the form of being vehemently discouraged from
3 pursuing her legal right to complain and seek proper discipline against her male counterparts and
4 management and has been denied normal promotions.

5 55. The Government had a duty to protect its female employees from sexual harassment.

6 56. As a direct and proximate result of Defendants' conduct, Plaintiff sustained
7 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
8 at trial.

9 57. As a direct and proximate result of Defendants' conduct, the Plaintiff has been, and
10 will be in the future, prevented from earning maximum earnings from her employment. The exact
11 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
12 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
13 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

14 58. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
15 is entitled to reasonable attorney fees and costs related thereto.

16 59. In committing the acts herein mentioned, the Defendants acted arbitrarily,
17 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
18 entitled to punitive damages in an amount to be determined at the time of trial.

19 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

20 **FIFTH CAUSE OF ACTION**
21 **Negligent Infliction of Emotional Distress**
22 **(all Defendants)**

23 60. Plaintiff incorporates paragraphs all the paragraphs of this Complaint as if more fully
24 set forth herein.

25 61. Defendants owed Plaintiff the duty of maintain a safe non-threatening workplace,
26 follow state and federal anti-discrimination statutes, and to act in a professional manner.

27 62. Defendants breached that duty by permitting the sexual harassment and hostile work
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1 environment against the Plaintiff, and telling Plaintiff she could not file a grievance concerning the
2 incident.

3 63. The conduct of Plaintiff's co-worker was outrageous.

4 64. Defendants acted with reckless disregard of the probability that Plaintiff would suffer
5 emotional distress knowing Mr. Lindbergh's conduct was outrageous and demeaning and failing to
6 stop the same.

7 65. Plaintiff suffered severe emotional distress as result of the outrageous acts of her co-
8 worker.

9 66. As a direct and proximate result of Defendants' conduct, Plaintiff sustained
10 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
11 at trial.

12 67. As a direct and proximate result of Defendants' conduct, the Plaintiff has been, and
13 will be in the future, prevented from earning maximum earnings from her employment. The exact
14 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
15 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
16 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

17 68. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
18 is entitled to reasonable attorney fees and costs related thereto.

19 69. In committing the acts herein mentioned, the Defendants acted arbitrarily,
20 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
21 entitled to punitive damages in an amount to be determined at the time of trial.

22 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

23 **SIXTH CAUSE OF ACTION**
24 **Intentional Infliction of Emotional Distress**
25 **(All Defendants)**

26 _____ 70. Plaintiff incorporates by reference all the paragraphs of this Complaint as if more fully
27 set forth herein.

71. Defendants owed Plaintiff the duty of maintain a safe non-threatening workplace, to follow state and federal anti-discrimination statutes and to act in a professional manner.

72. Defendant Lindbergh breached that duty by intentionally sexually harassing Plaintiff including:

- i. yelling at Plaintiff,
- ii. disparaging Plaintiff and ostracizing Plaintiff in the presence of the Crew,
- iii. making crude and offensive remarks regarding women in the presence of Plaintiff,
- iv. “spooning” Plaintiff, and touching her in a sexual nature,
- v. the inappropriate and unwelcome touching of Jessica Chacon, and making inappropriate comments regarding women, and
- vi. sending Plaintiff a postcard of a sexual nature after entering into an agreement with his employer to cease his improper conduct against Plaintiff.

73. Defendant Lindbergh admitted to the aforementioned conduct.

74. Defendant United States Division of Forestry breached their duty by failing to comply with state and federal anti-discrimination statutes, by failing to control the improper conduct of Plaintiff's co-worker, and by telling Plaintiff she could not file a grievance for the inappropriate acts committed against her.

75. This created a hostile work environment against Plaintiff.

76. The conduct of Defendants was outrageous and intentional.

77. Defendants acted with reckless disregard of the probability that Plaintiff would suffer emotional distress knowing this conduct was outrageous and demeaning and failing to stop the same.

78. Plaintiff suffered severe emotional distress as result of the outrageous acts of her co-worker Mr. Lindbergh and crew supervisors.

79. As a direct and proximate result of Defendants' conduct, Plaintiff sustained

1 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
2 at trial.

3 80. As a direct and proximate result of Defendants' conduct, the Plaintiff has been, and
4 will be in the future, prevented from earning maximum earnings from her employment. The exact
5 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
6 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
7 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

8 81. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
9 is entitled to reasonable attorney fees and costs related thereto.

10 82. In committing the acts herein mentioned, the Defendants acted arbitrarily,
11 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
12 entitled to punitive damages in an amount to be determined at the time of trial.

13 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

14 **SEVENTH CAUSE OF ACTION**
15 **Negligence (all Defendants)**

16 83. Plaintiff incorporates by reference all paragraphs of this Complaint as if more fully
17 set forth herein.

18 84. Defendants had a duty to conform to a standard of conduct to protect the plaintiff
19 in the workplace. Defendants also owed Plaintiff the duty of maintain a safe non-threatening
20 workplace in compliance with state and federal anti-discrimination statutes and to act in a
21 professional manner.

22 85. Defendants failed to meet this standard of conduct.

23 86. Defendant Lindbergh breached his duty by intentionally sexually harassing Plaintiff
24 including:

- 25 i. yelling at Plaintiff,
- 26 ii. disparaging Plaintiff and ostracizing Plaintiff in the presence of the Crew,
- 27 iii. making crude and offensive remarks regarding women in the presence of

1 Plaintiff,

2 iv. “spooning” Plaintiff, and touching her in a sexual nature,

3 v. the inappropriate and unwelcome touching of Jessica Chacon, and making
4 inappropriate comments regarding women, and

5 vi. sending Plaintiff a postcard of a sexual nature after entering into an agreement
6 with his employer to cease his improper conduct against Plaintiff.

7 87. Defendant Lindbergh admitted to the aforementioned conduct.

8 88. Defendant United States Division of Forestry breached their duty by failing to
9 comply with state and federal anti-discrimination statutes, by failing to control the
10 improper conduct of Plaintiff’s co-worker, and by telling Plaintiff she could not file
11 a grievance for the inappropriate acts committed against her.

12 89. This created a hostile work environment against Plaintiff.

13 90. The conduct of Defendants was outrageous and intentional.

14 91. Defendants’ breach of duty was the proximate or legal cause of the Plaintiff’s
15 resulting injury.

16 92. Defendants acted with reckless disregard of the probability that Plaintiff would suffer
17 emotional distress knowing his conduct was outrageous and demeaning and failing to stop the same.

18 93. Plaintiff suffered severe emotional distress as result of the outrageous acts of her co-
19 worker Mr. Lindbergh.

20 94. As a direct and proximate result of Defendant’s conduct, Plaintiff sustained
21 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
22 at trial.

23 95. As a direct and proximate result of Defendants’ conduct, the Plaintiff has been, and
24 will be in the future, prevented from earning maximum earnings from her employment. The exact
25 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
26 at the time of trial. As a further proximate result of the conduct of Defendant, Plaintiff has
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1 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

2 96. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
3 is entitled to reasonable attorney fees and costs related thereto.

4 97. In committing the acts herein mentioned, the Defendants acted arbitrarily,
5 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
6 entitled to punitive damages in an amount to be determined at the time of trial.

7 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

8 **EIGHTH CAUSE OF ACTION**
9 **Assault (Defendant Lindbergh)**

10 98. Plaintiff incorporates by reference all Paragraphs of this Complaint as if more fully
11 set forth herein.

12 99. Defendant engaged in acts of sexual harassment against the Plaintiff as described
13 above.

14 100. Defendant intended to create in the Plaintiff an apprehension of harmful or
15 offensive conduct. The apprehension that was created was of imminent threatened contact.
16 Defendant had the ability to commit the harm.

17 101. Defendant's conduct was harmful and offensive.

18 102. As a further, direct, proximate, and foreseeable result of Defendant's conduct
19 described above, Plaintiff has suffered shame, despair, humiliation, embarrassment, depression,
20 and emotional distress.

21 103. The conduct of Defendant was outrageous.

22 104. Defendant acted with reckless disregard of the probability that Plaintiff would suffer
23 emotional distress knowing his conduct was outrageous and demeaning and failing to stop the same.

24 105. Plaintiff suffered severe emotional distress as result of the outrageous acts of her co-
25 worker Mr. Lindbergh.

26 106. As a direct and proximate result of Defendant's conduct, Plaintiff sustained
27 substantial damages in excess of \$100,000.00. The exact amount of damages will be determined
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1 at trial.

2 107. As a direct and proximate result of Defendant's conduct, the Plaintiff has been, and
3 will be in the future, prevented from earning maximum earnings from her employment. The exact
4 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven
5 at the time of trial. As a further proximate result of the conduct of Defendant, Plaintiff has
6 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

7 108. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
8 is entitled to reasonable attorney fees and costs related thereto.

9 109. In committing the acts herein mentioned, the Defendants acted arbitrarily,
10 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
11 entitled to punitive damages in an amount to be determined at the time of trial.

12 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

13 **NINTH CAUSE OF ACTION**
14 **Battery (Defendant Lindbergh)**

15 110. Plaintiff incorporates by reference all Paragraphs of this Complaint as if fully more set
16 forth herein.

17 111. Defendant Lindbergh physically touched Plaintiff in a sexual manner including
18 "spooning" her at her place of work as described above.

19 112. Defendants' conduct was intentional.

20 113. Defendants' conduct was harmful and offensive.

21 114. As a further, direct, proximate, and foreseeable result of Defendants' afore stated
22 conduct, Plaintiff has suffered shame, despair, humiliation, embarrassment, depression, and
23 emotional distress resulting in damages in excess of \$100,000.00. The exact amount of damages
24 will be determined at trial.

25 115. As a direct and proximate result of Defendant's conduct, the Plaintiff has been, and
26 will be in the future, prevented from earning maximum earnings from her employment. The exact
27 amount of the loss of future earnings is thus far undetermined and accordingly, will be proven

1 at the time of trial. As a further proximate result of the conduct of Defendants, Plaintiff has
2 suffered physical and mental pain and suffering and will continue to suffer therefrom in the future.

3 116. Plaintiff has retained an attorney in order to prosecute this action and accordingly,
4 is entitled to reasonable attorney fees and costs related thereto.

5 117. In committing the acts herein mentioned, the Defendants acted arbitrarily,
6 capriciously, maliciously and with reckless disregard for Plaintiff. Consequently, Plaintiff is
7 entitled to punitive damages in an amount to be determined at the time of trial.

8 **WHEREFORE**, the Plaintiff prays for relief as set forth below:

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for relief as follows:

11 1. That Defendants be ordered to pay to Plaintiff a sum in excess of \$100,000.00, the
12 exact amount of which will be proven at the time of trial;

13 2. That Defendants be ordered to pay to Plaintiff a sum, the exact amount of which will
14 be proven at the time of trial, for Plaintiff's lost income, both past and future;

15 3. That Defendants be ordered to pay Plaintiff a sum in excess of \$100,000.00, the exact
16 amount of which will be proven at the time of trial, for Plaintiff's physical and mental pain.

17 4. That Plaintiff be awarded exemplary damages, as permitted by law, as a result of
18 Defendants' willful and wanton misconduct in a sum in excess of \$100,000.00;

19 5. That the Plaintiff be awarded the attorney's fees and court costs that she incurs in the
20 prosecution of this Complaint; and

6. Such other and further relief as the court may deem just and equitable in the premises.

JURY DEMAND

Plaintiff hereby demands a jury trial of this action.

Dated this 10th day of April, 2006.

MIRCH & MIRCH
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Reno, Nv 89501
(775-324-7444)

BY /ss/ Marie C. Mirch
Marie C. Mirch, Esq.
Attorneys for Plaintiff